

REMARKS

Pending in the present application are claims 1-5, 7-11, 13 and 16-21 of which claims 1, 8 and 16 are independent. In the Office Action, claims 1-5, 7-11, 13 and 16-21 were rejected under 35 U.S.C. § 103(a) as unpatentable over Heidingsfeld et al. (U.S. Pat. No. 6,823,359) in view of Meyer (U.S. Pat. No. 6,157,943). With this Response, a declaration of the inventor, Stephen Appling, submitted under 37 C.F.R. § 1.131 establishes conception and actual reduction to practice of Applicant's invention prior to the earliest priority date of Heidingsfeld et al. In reliance on the inventor's declaration submitted herewith and the following remarks, the present application containing claims 1-5, 7-11, 13 and 16-21 is in condition for allowance, and reconsideration and notice to that effect is respectfully requested.

In response to previous Office Actions citing Heidingsfeld et al. and Meyer, two declarations by the Inventor, Stephen C. Appling, and one declaration by Attorney Michael Pavento were submitted under 37 C.F.R. § 1.131. The declarations by Mr. Appling and Mr. Pavento establish invention of the subject matter of the pending claims prior to the earliest filing date of Heidingsfeld et al. and reasonable diligence in preparing the present application for filing with the USPTO from a date just prior to the effective date of Heidingsfeld et al. until the filing of the present application. In spite of the declarations of both the Inventor and the Attorney responsible for final revisions and filing the present application, the Office Action of July 23, 2007 rejected the evidence submitted and maintained that the declarations did not show detailed proof as required under M.P.E.P. § 2138.06. Therefore, a third declaration by the inventor Stephen Appling establishing conception and actual reduction to practice of Applicant's invention is submitted in response to the Office Action of July 23, 2007.

Submitted with this Amendment is a Third Declaration of Stephen Appling. The Declaration refers to three new Exhibits submitted herewith. Exhibit 1 is a design document discussing an application including functions for updating objects contained in a web page using an invisible frame configured to retrieve updated data from a server and cause an object in the web page to be updated. Exhibits 2 and 3 are advertisements from the ASHRAE Journal showing that

the WebCTRL product, which contained an embodiment of the invention claimed in the present application, was demonstrated at the AHR Expo on February 7 and 8 of 2000.

The Third Declaration of Stephen Appling establishes that the invention claimed in the present application was conceived **and reduced to practice** prior to the US filing date of Heidingsfeld et al. Because the Third Declaration establishes that the claimed invention in this application was made prior to the November 21, 2000, Heidingsfeld et al. does not qualify as prior art under 35 U.S.C. § 103(a). Therefore, the rejections based upon Heidingsfeld et al. should be withdrawn.

Respectfully submitted,

KINNEY & LANGE, P.A.

Date:

1/16/08

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